

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

09-CR-6232L

v.

TYSHOD DURR,

Defendant.

The defendant, Tyshod Durr (“Durr”), stands indicted on four narcotics offenses. This Court referred all pretrial motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Durr duly filed motions to suppress. They included a motion to suppress identification testimony and a motion to suppress statements, both oral and written.

Magistrate Judge Payson conducted a suppression hearing. Timothy A. Kernan, a Special Agent with the Drug Enforcement Agency, testified at the hearing. The defendant elected not to testify.

Magistrate Judge Payson issued a thorough, 18-page Report and Recommendation (“Report”) recommending that this Court deny Durr’s several motions to suppress. The time to file objections to that Report has now lapsed and there are no objections filed to Magistrate Judge Payson’s Report.

I have reviewed the Report, as well as the transcript of the suppression hearing, which has been prepared. In addition, I have reviewed the photographs (Ex. 1) that constituted the photographic array shown to the witness who made the identification. Based on this review, I find no reason to reject, modify or alter in any way Magistrate Judge Payson's Report. I, therefore, accept the Report and deny defendant's motions to suppress.

The failure of Durr to object to the Magistrate Judge's Report is reason enough to accept the Report. Nevertheless, I have reviewed all of the above material and, on the merits, I believe the Magistrate Judge's determinations of fact and conclusions of law are well supported in the record.

Concerning the display of the photographic array, there is nothing in the testimony or the photographs themselves to suggest that this array was unduly suggestive. I agree with the Magistrate Judge's determinations and find that there is no basis to suppress the identification.

The Magistrate Judge also considered Durr's motion to suppress statements. First of all, I agree with the Magistrate Judge that Durr was properly arrested in the residence based on the arrest warrant issued by a judicial officer. There was nothing improper for the arresting agents to enter the residence under those circumstances to arrest to Durr.

In addition, none of the objections relating to the statements stand close scrutiny. All of the testimony indicates that Durr was advised of his *Miranda* rights, that he waived them and voluntarily signed a written statement. In addition, he made oral statements prior to their being placed in the written statement. Magistrate Judge Payson also indicated that there was no problem eliciting the pedigree information from Durr when that occurred.

In sum, I agree with Magistrate Judge Payson's Report that there is no basis to suppress either the oral or written statements that Durr made on the day of his arrest.

CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #29) of United States Magistrate Judge Marian W. Payson.

Therefore, I deny the defendant's motion to suppress testimony concerning identification and motion to suppress statements (Dkt. #18, #21).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
August 11, 2010.